

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 92-098-T - ORDER NO. 92-745 ✓
SEPTEMBER 4, 1992

IN RE: Application of Drug Transport, Inc.,)	ORDER
1939 Forge Street, P. O. Box 1678,)	DENYING
Tucker, GA 30085-1678, for a Class E)	RECONSIDERATION
Certificate of Public Convenience)	
and Necessity.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration filed on August 19, 1992, by the Intervenor, Southeastern Freight Lines, Inc. (Southeastern). Southeastern asks that we reconsider Order No. 92-601, in which we granted a Class E Certificate of Public Convenience & Necessity to Drug Transport, Inc. (Drug Transport). Because of the reasoning stated in the following paragraphs, this Petition must be denied.

An examination of Southeastern's Petition for Reconsideration reveals numerous allegations of error on the part of the Commission in Order No. 92-601. The gravamen of the allegations is that the Commission should have given more credibility to Southeastern's witnesses than it did to Drug Transport's witnesses. The Commission sits as the trier of facts, akin to a jury of experts. South Carolina Telephone & Telegraph Company v. Public Service Commission, 270 SC 590, 597, 244 SE 2d 278, at 282, (1978). In this case, the Commission merely afforded the greater

weight of the evidence to Drug Transport's witnesses. This is a matter purely within the realm of the Commission's authority and discretion.

Further, this matter is governed by Regulation 103-134 which states in part as follows:

1. For Common Carrier Authority.

- A. An application for a certificate or to amend a certificate to operate as a common carrier by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application (emphasis added).

As the regulation shows, even if the Commission had found in Order No. 92-601 that the public convenience and necessity was already being served, the Commission had the discretion to grant or deny the application. The Commission stops short in Order No. 92-601 of a finding that the public convenience and necessity was already being served, but even if it had so found, the Commission had the discretion to grant the Certificate to Drug Transport, which it did.

As stated in Order No. 92-601, the Commission stated that it was impressed with the large number of shippers who appeared in the proceedings and stated that they would like to utilize the services of Drug Transport, if indeed Drug Transport, Inc. was certificated for intrastate authority in South Carolina. Regulation 103-134 allowed the Commission to grant the certificate, even when there

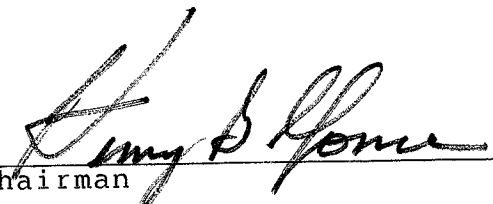
was some evidence for the fact that shippers needs and the public convenience and necessity was already being served.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Reconsideration filed by Southeastern Freight Lines, Inc. is hereby denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)